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REDBUBBLE INC.

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

ATARI INTERACTIVE, INC.,

Plaintiff,

v.

REDBUBBLE INC.,

Defendant.

CASE NO. 3:18-CV-03451-JST

**DEFENDANT REDBUBBLE'S
RESPONSE TO ATARI'S NOTICE OF
RELATED CASE AND RELATED
ADMINISTRATIVE MOTION**

Pursuant to Local Rule 3-12(e), defendant Redbubble Inc. ("Redbubble") hereby responds to the Notice of Related Case filed by plaintiff Atari Interactive, Inc. ("Atari") on July 16, 2018 in *Atari Interactive, Inc. v. TP Apparel, LLC dba TeePublic, et al.*, Case No. 3:13-CV-04115-JD, and Atari's related Administrative Motion to Consider Whether Cases Should be Related. In particular, Redbubble feels the need to clarify the factual record with respect to certain statements made by Atari in its Notice of Related Case.

First off, the two actions do not concern substantially the same parties. While the actions both contain the same plaintiff, the defendants in the two actions are different, and there is no relationship between the defendants. Nor do the two actions contain substantially the same property. While there is certainly some overlap in the intellectual property asserted in the two lawsuits, the copyrights and

1 trademarks at issue are not identical: as an example, Atari has asserted claims involving the
2 trademarks “MISSILE COMMAND” and “YAR’S REVENGE” and copyrights to “Missile
3 Command”, “Adventure”, and “Yar’s Revenge” against TeePublic but not against Redbubble.
4 Moreover, a cursory review of the Complaints in the two action will reveal that the accused products
5 sold by third parties through the Redbubble marketplace are not the same as the products offered by
6 TeePublic and appear to have been created by different individuals or entities.

7 More fundamentally, Atari erroneously suggests that the legal issues and arguments in the two
8 cases are largely the same because Redbubble and TeePublic “operate similar business models and
9 provide similarly infringing products.” While TeePublic represents itself as a storefront for designers
10 looking to sell their artwork on various types of products such as t-shirts, mugs and stickers,
11 TeePublic admittedly sells the products itself, setting prices and paying commissions to its users. *See*
12 <https://teepublic.zendesk.com/hc/en-us/articles/115012360667-How-does-TeePublic-work->;
13 [https://teepublic.zendesk.com/hc/en-us/articles/115012518668-Can-I-change-the-price-of-my-](https://teepublic.zendesk.com/hc/en-us/articles/115012518668-Can-I-change-the-price-of-my-products-)
14 [products-](https://www.teepublic.com/commissions); <https://www.teepublic.com/commissions> . TeePublic also prints the products it sells. *See*
15 <https://teepublic.zendesk.com/hc/en-us/articles/115012398127-What-is-your-printing-technique-> .
16 Thus, TeePublic’s conduct in manufacturing and selling the allegedly infringing products subjects it
17 to potential liability as a direct infringer.

18 In contrast, much like eBay or the Amazon Marketplace, Redbubble hosts an Internet
19 marketplace platform (located at www.redbubble.com) where independent third party artists can
20 upload and sell their creative works to customers around the world on a variety of different types of
21 products. Redbubble also provides related online services that assist those artists to connect with third
22 party fulfillers who also participate in the Redbubble online marketplace to manufacture the artists’
23 products. However, unlike TeePublic, Redbubble does not sell the products offered over the
24 Redbubble platform, nor does it print or otherwise manufacture the products sold via the Redbubble
25 marketplace. *See, e.g.,* <https://www.redbubble.com/agreement> . As a result, unlike TeePublic,
26 Redbubble’s potential liability must be assessed not under a direct infringement theory, but rather
27 under secondary liability principles. Put another way, the legal arguments and issues applicable to
28 Atari’s claims against Redbubble are substantially different than the arguments and issues relating to

1 Atari's claims against TeePublic, due to substantial differences in the manner in which the two
2 parties operate their businesses.

3 All this having been said, Redbubble is indifferent as to whether these actions are related.
4 While there are significant differences in the two cases as set forth above, Redbubble recognizes that
5 there are also similarities, and that there may be some benefit in having a single judge who
6 understands the differences in the two cases handle both cases. Redbubble simply wanted to make
7 sure the Court has an accurate picture of the underlying facts, so it can make a fully informed
8 decision on whether to relate the two matters.

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10 Dated: July 23, 2018

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12 By: /s/ Kenneth B. Wilson
13 KENNETH B. WILSON

14 Attorneys for Defendant
15 REDBUBBLE INC.
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